



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory and Manual Section Manager
Department of Medical Assistance Services

FROM: ELIZABETH A. MCDONALD
Special Counsel to DMAS

DATE: April 13, 2010

**SUBJECT: Final Exempt Regulation – Eligibility Requirements for the Children’s
Mental Health Waiver Program (12 VAC 30-135-140)**

I have reviewed the above final exempt regulation that will amend the Children’s Mental Health Program Waiver to permit a child to be evaluated as a separate assistance unit of one. You have asked the Office of the Attorney General to review and determine if DMAS has the legal authority to promulgate the final exempt regulation and if it comports with state and federal law.

Based on that review, it is this Office’s view that DMAS has the authority, subject to compliance with the provisions of Article 2 of the Administrative Process Act (APA), and has not exceeded that authority.

This regulation is required by Item 297(XX) of the 2010 *Acts of Assembly*. It is my view that the promulgation of these regulations is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code § 2.2-4006(A)(4)(a).

If you have any questions, please feel free to contact me at 786-7363.

cc: Kim F. Piner
Senior Assistant Attorney General